

Message Text

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TO AMEMBASSY SAN JOSE IMMEDIATE

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E.O. 11652: GDS

TAGS: PFOR, CPRS, CR

SUBJECT: COSTA RICAN EXTRADITION LAW

REF: SAN JOSE 3413

1. IN VIEW OF MINOR SIGNIFICANCE OF PROVISIONS OF ARTICLE 2 PARAGRAPHS A AND B DEPARTMENT HAD NOT FELT IT NECESSARY TO COMMENT FURTHER ON THEM AS THEY PROBABLY WOULD NOT HAMPER EXTRADITION REQUESTS UNDER TREATY, AND THEY DO NOT APPEAR TO BE DESIGNED TO PROTECT VESCO. DEPARTMENT, HOWEVER, WILL PROVIDE SOME SUGGESTED LANGUAGE BELOW TO BE INCLUDED IN PACKAGE FOR ODUBER.

2. WITH REGARD TO PARA A, THIS WAS DISCUSSED BRIEFLY LAST YEAR WITH CASTILLO IN NEW YORK. FIRST OF ALL, PROVISIONS EITHER IN TREATY OR INTERNAL LAW PROVIDING FOR TRIAL IN REQUESTED COUNTRY OF ONE OF ITS OWN NATIONALS INSTEAD OF EXTRADITION OF THAT NATIONAL TO REQUESTING COUNTRY ARE COMMON, PARTICULARLY IN SOUTH AMERICA. SECONDLY, WHEN WE RAISED OBJECTION BEFORE OF EXTENDING THIS PROTECTION TO
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RESIDENTS, WE WERE INFORMED THAT RESIDENTS REFERRED TO IN

THIS PROVISION, I.E., THOSE MARRIED TO A COSTA RICAN WOMAN AND HAVING ONE OR MORE CHILDREN WITH HER, POSSESS RIGHTS RESERVED FOR NATIONALS UNDER THE POLITICAL CONSTITUTION OR

SPECIAL LAWS, IN CONTRAST TO "PERMANENT RESIDENTS."
THIRDLY, A PERMANENT RESIDENT, IF HE CAN SHOW HE HAS MAINTAINED UNIMPEACHABLE CONDUCT, MAY BECOME A CITIZEN AFTER 5 YEARS AND THEREFORE BECOME EXEMPT FROM EXTRADITION LONG BEFORE THE 10-YEAR PERIOD SPECIFIED IN THIS PARAGRAPH;
AND, FOURTHLY, CASTILLO WAS OF OPINION THAT NO FUGITIVE FELON WOULD BE ABLE TO CONVINCE COURTS OF "UNIMPEACHABLE CONDUCT."

3. EMBASSY MAY, HOWEVER, INCLUDE FOLLOWING COMMENT ON PARA A:

(A) ARTICLE 2, PARAGRAPH A: THIS PROVISION EXEMPTS FROM EXTRADITION PERSONS RESIDENT IN COSTA RICA FOR 10 YEARS WHO ALSO MEET SEVERAL OTHER CRITERIA. THE CURRENT EXTRADITION TREATY AUTHORIZES EXTRADITION OF NATIONALS AND WE ARE THEREFORE CONCERNED IN PRINCIPLE ABOUT A PROVISION WHICH WOULD EXTEND PROTECTION AGAINST EXTRADITION TO RESIDENTS.

(B) TRANSLATION IS AS FOLLOWS: ARTICULO 2, PARRAFO A: ESTA DISPOSICION EXIME DE LA EXTRADICION A PERSONAS QUE HUBIEREN RESIDIDO 10 ANOS EN COSTA RICA Y QUE HUBIEREN SATISFECHO OTROS VARIOS CRITERIOS. EL TRATADO DE EXTRADICION ACTUALMENTE EN VIGOR AUTORIZA LA EXTRADICION DE NACIONALES Y, POR LO TANTO, NOS INQUIETA, EN PRINCIPIO, UNA DISPOSICION QUE EXTIENDE PROTECCION CONTRA LA EXTRADICION DE RESIDENTES.

4. WITH REGARD TO PARA B, IT IS COMMON FOR EXTRADITION TREATIES TO HAVE PROVISION DENYING EXTRADITION IF REQUEST IS BASED ON SAME ACTS FOR WHICH PERSON IS BEING OR HAS BEEN TRIED IN REQUESTED COUNTRY. WE HAD NO OBJECTION, THEREFORE, TO BASIC CONCEPT OF PARA B. WE DID, HOWEVER, SEE MINOR AMBIGUITY WHICH MIGHT HAVE BEEN DUE TO TRANSLATION. FOLLOWING COMMENT, HOWEVER, MAY BE USEFUL;
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(A) ARTICLE 2, PARAGRAPH B: THERE APPEARS TO BE AN AMBIGUITY ABOUT WHETHER THE SPECIFIC PERSON REQUESTED IN EXTRADITION HAS TO BE ACQUITTED ETC. TO BENEFIT FROM THIS PROVISION. COULD THIS PROVISION BE READ TO BENEFIT ALL CO-CONSPIRATORS IF SOME CO-CONSPIRATORS ARE ACQUITTED, GRANTED AMNESTY OR PARDON, OR HAVE SERVED THE SENTENCE IMPOSED?

(B) TRANSLATION IS AS FOLLOWS: ARTICULO 2, PARRAFO B:
PARECE EXISTIR CIERTA AMBIGUEDAD SOBRE SI LA PERSONA
ESPECIFICA SOLICITADA EN LA EXTRADICION TIENE QUE SER
ABSUELTA, ETC., PARA PODER BENEFICIARSE CON ESTA DISPOSICION

PODRIA ESTA DISPOSICION INTERPRETARSE COMO QUE BENEFICIA
A TODOS LOS COMPLICES O CO-CONSPIRADORES SI ALGUNOS DE
ELLOS HAN SIDO ABSUELTOS, INDULTADOS O PERDONADOS O HAN
CUMPLIDO LA CONDENA IMPUESTA? SISCO

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